

JCA5merC

conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

19 Cr. 832 (ER)

5 LUIS MERCED,
6 WILLIAM SKINNER,
7 DORIAN BROOKS,

Defendants.

8 -----x

9 December 10, 2019
10 10:10 a.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge
14
15
16
17
18
19
20
21
22
23
24
25

JCA5merC

conference

APPEARANCES

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York

BY: ANDREW K. CHAN

Assistant United States Attorney

MIEDEL & MYSLIWIEC

Attorneys for Defendant Merced

BY: AARON MYSLIWIEC

LAW OFFICE OF GEORGE R. GOLTZER

Attorneys for Defendant Skinner

BY: GEORGE R. GOLTZER

LAW OFFICE OF MARK S. DeMARCO

Attorneys for Defendant Brooks

BY: MARK S. DeMARCO

JCA5merC

conference

1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. CHAN: Good morning, your Honor. Andrew Chan here
5 on behalf of the United States.

6 THE COURT: Good morning.

7 MR. MYSLIWIEC: Good morning, your Honor. Aaron
8 Mysliwiec here on behalf of Mr. Merced.

9 MR. GOLTZER: Good morning, your Honor. George
10 Goltzer for Mr. Skinner.

11 MR. DeMARCO: And Mark DeMarco for Mr. Brooks. Good
12 morning, your Honor.

13 THE COURT: Good morning to you all. This matter is
14 on for initial conference so, Mr. Chan, beginning with you, why
15 don't you tell me a little bit about the case.

16 MR. CHAN: Your Honor, all three defendants are
17 charged with one count of murder in furtherance of drug
18 trafficking in violation of Title 21, United States Code,
19 Section 848(e), and Title 18 United States Code Section 2.
20 These charges relate to the participation of the defendants in
21 a murder that took place on February 10, 1989. On that date,
22 in the Bedford Stuyvesant neighborhood of Brooklyn these men
23 participated in the murder of an individual named Efren
24 Cardenas, who was shot over 20 times. The evidence at trial
25 will show that these three defendants participated in the

JCA5merC

conference

1 murder as part of their involvement in a drug trafficking
2 organization that was distributing large kilogram quantities of
3 powder cocaine and crack cocaine in the New York City
4 metropolitan area as well as the Washington, D.C. metropolitan
5 area.

6 An indictment was filed on November 19th, and
7 Defendants Merced and Skinner were arrested on November 20th
8 and arrested and presented in magistrate court. On December 6,
9 Dorian Brooks was transferred from state custody to federal
10 custody and was also presented in magistrate's court.

11 Can I provide an update regarding discovery?

12 THE COURT: Please.

13 First of all, tell me what discovery is.

14 MR. CHAN: The discovery in this case is primarily
15 consisting of law enforcement records, an autopsy report, some
16 photographs, some phone records, excerpts from some witness
17 interview reports, and a trial transcript from defendant
18 William Skinner's trial relating to this murder in Brooklyn
19 County Supreme Court back in October of you 1990. Unlike many
20 of our other cases, the discovery in this case is not
21 particularly voluminous. There is not much of any electronic
22 discovery to be produced and so I think that it should not take
23 very long for the defendants to review the discovery. We
24 already entered a protective order for the Court's
25 consideration on behalf of defendants Merced and Skinner, which

JCA5merC

conference

1 the Court signed, and discovery was produced to them on
2 November 27. I believe on Friday I filed a motion to the Court
3 requesting for a modification of the prospective or to also
4 cover Defendant Brooks, and the discovery was given to Brooks'
5 attorney before the conference this morning.

6 THE COURT: Is that protective order on consent?

7 MR. GOLTZER: Yes.

8 MR. MYSLIWIEC: Yes.

9 MR. DeMARCO: Yes, your Honor.

10 THE COURT: So, discovery is complete from the
11 government's perspective, Mr. Chan?

12 MR. CHAN: Yes, your Honor.

13 THE COURT: Why don't you tell me about that 1990
14 state trial.

15 MR. CHAN: Yes, your Honor.

16 Defendant William Skinner was arrested by the New York
17 City Police Department in connection with this murder of Efren
18 Cardenas. His case, and his case alone, the other two
19 defendants in this case were not arrested and were not charged
20 in Brooklyn Supreme Court. Mr. Skinner was. He proceeded to
21 trial in October of 1990. My understanding, based on the Court
22 records, is that he was acquitted of the murder charge and then
23 he was convicted of a criminal possession of a weapon charge in
24 the second degree. That case then went to the Appellate
25 Division and, on appeal, the Appellate Division vacated the

JCA5merC

conference

1 conviction for the criminal possession of weapon on the grounds
2 of insufficient evidence.

3 THE COURT: How do the defendants wish to proceed?

4 MR. GOLTZER: We would like an opportunity to review
5 the discovery, submit preliminary budgets to the Court for at
6 least two of the defendants because it is a potentially capital
7 case. Even though the government is not at this time
8 requesting mitigation, it is incumbent upon us, with gentlemen
9 of middle age who have been out of trouble for the most part
10 for, at least Mr. Skinner for 30 years or 25 years, to submit
11 mitigation at some point, if necessary.

12 So, we would like to put together a team, have a
13 chance to review the discovery, get a decision from the
14 government on the death penalty. We expect we know it is going
15 to be, but we would like to defer a motion schedule until we at
16 least have that decision.

17 THE COURT: Mr. Chan, what can you tell me about that?

18 MR. CHAN: Your Honor, all I can really say is that
19 the capital case process is under way with respect to two of
20 the three defendants. Mr. Merced is not eligible for the death
21 penalty because he was 17 years old at the time of the murder.
22 Defendants Skinner and Brooks are potentially eligible for the
23 death penalty. I can say that the capital case process is
24 under way. As the Court is aware, the process can sometimes
25 take months. At this stage we are not asking for any

JCA5merC

conference

1 submissions from the defendants.

2 THE COURT: Very well.

3 So, Mr. Goltzer, how long to make sense?

4 MR. GOLTZER: Well, we were requesting -- and we
5 consulted with your deputy -- for February the -- was it the
6 12th? I'm sorry.

7 THE DEPUTY CLERK: Yes, February 12th.

8 MR. GOLTZER: February 12 at 3:30 to give the Court an
9 update of where we are, if that's agreeable.

10 THE COURT: That's okay with me.

11 Mr. Chan?

12 MR. CHAN: Yes, your Honor.

13 MR. GOLTZER: And we, of course, consent to the
14 exclusion.

15 THE COURT: Very well.

16 Is there anything else that we can do today, Mr. Chan?

17 MR. CHAN: Your Honor, the government would move to
18 exclude time under the Speedy Trial Act between today and the
19 date of the next conference on February 12th. Such an
20 exclusion of time is in the interests of justice because it
21 will allow for the defendants to review the discovery that's
22 been produced and to determine what, if any, pretrial motions
23 they wish to file.

24 THE COURT: No objection?

25 MR. GOLTZER: None.

JCA5merC

conference

1 MR. DeMARCO: No objection.

2 MR. MYSLIWIEC: No objection.

3 THE COURT: Very well.

4 I will exclude the time between now and February 12th
5 under the Speedy Trial Act. I find that it is in the best
6 interests of the defendant to review the discovery that's been
7 provided by the government and that that interest outweighs the
8 interest of the public in a speedy and public trial. So, that
9 time will be excluded.

10 Unless there is anything else, we are adjourned.

11 o0o

12

13

14

15

16

17

18

19

20

21

22

23

24

25